

## **Appendix to the Reply, R-18-0033**

### **Clean and Redline Versions**

## **ARIZONA RULES OF CIVIL PROCEDURE**

### **Rule 8.1. Assignment and Management of Commercial Cases**

**(a) Application; Definitions.** This rule applies in counties that have established specialized programs for commercial cases, which are referred to in this rule as “the commercial court.” The commercial court will hear eligible “commercial cases” assigned to it in accordance with this rule. To be eligible for the commercial court, a commercial case must meet the requirements of Rule 8.1(b).

**(1)** A “commercial case” is one in which:

**(A)** at least one plaintiff and one defendant are “business organizations;”

**(B)** the primary issues of law and fact concern a “business organization;” or

**(C)** the primary issues of law and fact concern a “business contract or transaction.”

**(2)** A “business organization” includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, master limited partnership, professional association, joint venture, business trust, or a political subdivision or government entity that is a party to a business contract or transaction. A “business organization” excludes an individual, a family trust, or a political subdivision or government entity that is not a party to a business contract or transaction.

**(3)** A “business contract or transaction” is one in which a business organization sold, purchased, licensed, transferred, or otherwise provided goods, materials, services, intellectual property, funds, realty, or other obligations.

**(b) Eligible Case Types.** A commercial case is generally eligible for the commercial court if it meets one of the following descriptions:

**(1)** concerns the internal affairs, governance, dissolution, receivership, or liquidation of a business organization;

**(2)** arises out of obligations, liabilities, or indemnity claims between or among owners of the same business organization (including shareholders, members, and partners), or which concerns the liability or indemnity of individuals within a business organization (including officers, directors, managers, member managers, general partners, and trustees);

**(3)** concerns the sale, merger, or dissolution of a business organization, or the sale of substantially all of the assets of a business organization;

**(4)** relates to trade secrets or misappropriation of intellectual property, or arises from an agreement not to solicit, compete, or disclose;

- (5) is a shareholder or member derivative action;
- (6) arises from a commercial real estate transaction;
- (7) arises from a relationship between a franchisor and a franchisee;
- (8) involves the purchase or sale of securities or allegations of securities fraud; ~~or~~
- (9) concerns a claim under state antitrust law;
- (10) arises from a business contract or transaction governed by the Uniform Commercial Code;
- (11) is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;
- (12) arises out of tortious or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or
- (13) arises from any dispute between a business organization and an insurer under a commercial insurance policy, including an action by either the business or the insurer related to coverage or bad faith.

(c) **Ineligible Case Types.** A case that seeks only monetary relief in an amount less than \$300,000 is not eligible for the commercial court. The following case types are generally not commercial cases unless business issues predominate:

- (1) evictions;
- (2) eminent domain or condemnation;
- (3) civil rights;
- (4) motor vehicle torts and other torts involving personal injury to a plaintiff;
- (5) administrative appeals;
- (6) domestic relations, protective orders, or criminal matters, except a criminal contempt arising in a commercial court case; or
- (7) wrongful termination of employment and statutory employment claims; or
- (8) disputes concerning consumer contracts or transactions. A “consumer contract or transaction” is one that is primarily for personal, family, or household purposes.

(d) **Assignment of Cases to the Commercial Court.**

- (1) **Request.** A party to an eligible commercial case may request assignment of the case to the commercial court.
- (2) **By Plaintiff.** A plaintiff seeking assignment of an eligible case to the commercial court must do so at the time of filing the complaint by (A) including in the initial complaint’s caption the words “commercial court assignment requested,” and (B) completing a civil cover sheet that indicates the action is an eligible commercial case.

- (3) **By Other Parties.** If a plaintiff has not sought assignment to the commercial court, another party, within 20 days after that party's appearance, may file a separate notice stating that the case is eligible for, and requesting assignment of the case to, the commercial court.
- (4) **Assignment.** Upon the filing of a complaint by a plaintiff requesting assignment to the commercial court under subpart (d)(2), or the filing by another party of a Notice Requesting Assignment to the Commercial Court under subpart (d)(3), the case will be assigned to the commercial court.
- (5) **Transfer out of Commercial Court by the Presiding Judge.** After assignment of a case to the commercial court, if the commercial court judge determines the matter is not an eligible commercial case, then the judge may either keep the case or request that the presiding judge or designee transfer the case out of the commercial court. If the presiding judge or designee agrees to transfer the case out of the commercial court, the presiding judge or designee may either leave the case with the judge to whom it is currently assigned or reassign the case to a general civil court.
- (6) **Discretion of Presiding Judge.** The presiding judge or designee may reassign any case that qualifies under Rule 8.1(b)(6), (7), (10), or (11) to a general civil court.
- (7) **Judicial Request to Transfer to the Commercial Court.** Within 20 days after the filing of the first responsive pleading or Rule 12 motion, a judge of a general civil court may request the presiding judge or designee to transfer a case to the commercial court if that judge determines the matter is an eligible commercial case.
- (8) **Complex Cases.** Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to the Maricopa County complex civil litigation program under applicable local rules.
- (e) **Case Management.** Rules 16(a) through 16(j) apply to cases in the commercial court, except:
- (1) **Scheduling Conference.** Scheduling conferences under Rule 16(d) are mandatory.
- (2) **Early Meeting.** Before filing a Rule 16(c) Joint Report, and in addition to conferring about the subjects in Rule 16(b)(1), the parties must confer, as set forth in the commercial court's checklist governing the production of electronically stored information, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of such information, including:
- (A) requirements and limits on disclosure and production of electronically stored information;
- (B) the form or formats in which the electronically stored information will be disclosed or produced; and
- (C) if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing electronically stored information.

**(3) *Joint Report and Proposed Scheduling Order.*** The parties' Rule 16(b) Joint Report and Proposed Scheduling Order must address the items specified in Forms 14(a) and 14(b), including:

(A) whether the parties expect electronically stored information to be an issue in the case and, if so, whether they have reached an agreement regarding the discovery of electronically stored information, have filed a stipulated order, and have or anticipate disputes concerning electronically stored information;

(B) whether the parties have reached an agreement regarding the inadvertent production of privileged material pursuant to Arizona Rule of Evidence 502, and, if so, whether they have filed a stipulated order;

(C) whether any issues have arisen or are expected to arise regarding claims of privilege or protection of trial preparation materials under Rules 26(b)(6) and 26.1(h);

(D) whether the parties believe that a protective order is necessary and, if so, whether they have filed a stipulated protective order; and

(E) whether the commercial court should assign the case to a tier other than Tier 3 after the Rule 16(d) scheduling conference, and, if so, why.

**(4) *Motions to Dismiss.*** Any motion to dismiss pursuant to Rule 12(b)(6) must attach a good faith consultation certificate complying with Rule 7.1(h) certifying that the parties have been unable to agree that the pleading is curable by a permissible amendment.

**(f) *Motions.*** With notice to the parties, a commercial court judge may modify the formal requirements of Rule 7.1(a) and may adopt a different practice for the efficient and prompt resolution of motions.

**(g) *Cases Not in the Commercial Court.*** The case management procedures in Rule 8.1(e) are available to any judge who finds those procedures beneficial, wholly or partially, in managing a commercial case that is not assigned to the commercial court, or that is pending in a county that has not established a commercial court.

## **Experimental Rule 8.1. Assignment and Management of Commercial Cases**

**(a) Application; Definitions.** This rule applies in counties that have established specialized ~~courts~~ programs for commercial cases, which are referred to in this rule as “the commercial court.” The commercial court will hear eligible “commercial cases” as defined in this Rule except as provided in Rule 8.1(d) assigned to it in accordance with this rule. To be eligible for the commercial court, a commercial case must meet the requirements of Rule 8.1(b).

(1) A “commercial case” is one in which:

(A) ~~A~~at least one plaintiff and one defendant are “business organizations;”

(B) ~~T~~he primary issues of law and fact concern a “business organization;” or

(C) ~~T~~he primary issues of law and fact concern a “business contract or transaction.”

(2) A “business organization” includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, master limited partnership, professional association, joint venture, business trust, or a political subdivision or government entity that is a party to a business contract or transaction. A “business organization” excludes an individual, a family trust, or a political subdivision or government entity that is not a party to a business contract or transaction.

(3) A “business contract or transaction” is one in which a business organization sold, purchased, licensed, transferred, or otherwise provided goods, materials, services, intellectual property, funds, realty, or other obligations.

**(b) Eligible Case Types.** A commercial case that meets one of the following descriptions is generally eligible for the commercial court if it meets one of the following descriptions ~~a commercial case~~:

(1) ~~C~~oncerns the internal affairs, governance, dissolution, receivership, or liquidation of a business organization;

(2) ~~A~~arises out of obligations, liabilities, or indemnity claims between or among owners of the same business organization (including shareholders, members, and partners), or which concerns the liability or indemnity of individuals within a business organization (including officers, directors, managers, member managers, general partners, and trustees);

(3) ~~C~~oncerns the sale, merger, or dissolution of a business organization, or the sale of substantially all of the assets of a business organization;

(4) ~~R~~elates to trade secrets or misappropriation of intellectual property, or arises from an agreement not to solicit, compete, or disclose;

(5) ~~I~~s a shareholder or member derivative action;

(6) ~~A~~arises from a commercial real estate transaction;

(7) ~~A~~arises from a relationship between a franchisor and a franchisee;

- (8) ~~I~~involves the purchase or sale of securities or allegations of securities fraud; or
  - (9) ~~C~~concerns a claim under state antitrust law;
  - (10) ~~A~~arises from a business contract or transaction governed by the Uniform Commercial Code;
  - (11) ~~I~~is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;
  - (12) ~~A~~arises out of tortious or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or
  - (13) ~~Concerns a surety bond, or arises under any type of~~arises from any dispute between a business organization and an insurer under a commercial insurance policy ~~purchased by a business organization,~~ including an action by either the business or the insurer related to ~~involving coverage, or bad faith, or a third-party indemnity claim against an insurer.~~
- (c) **Ineligible Case Types.** A case that seeks only monetary relief in an amount less than \$300,000 is not eligible for the commercial court. The following case types are generally not commercial cases unless business issues predominate:
- (1) ~~E~~evictions;
  - (2) ~~E~~minent domain or condemnation;
  - (3) ~~C~~ivil rights;
  - (4) ~~M~~otor vehicle torts and other torts involving personal injury to a plaintiff;
  - (5) ~~A~~administrative appeals;
  - (6) ~~D~~omestic relations, protective orders, or criminal matters, except a criminal contempt arising in a commercial court case; or
  - (7) ~~W~~rongful termination of employment and statutory employment claims; or
  - (8) ~~D~~isputes concerning consumer contracts or transactions. A “consumer contract or transaction” is one that is primarily for personal, family, or household purposes.
- ~~(d) **Compulsory Arbitration.** A commercial case that is subject to compulsory arbitration is not eligible for assignment to commercial court.~~
- ~~(e)~~**(d) Assignment of Cases to the Commercial Courts.**
- (1) **Request.** A party to an eligible commercial case may request assignment of the case to the commercial court.
  - ~~(1)~~**(2) Plaintiff’s Duties By Plaintiff.** A plaintiff seeking assignment of an eligible case to the commercial court must do so at the time of filing the complaint by (A) ~~include~~ including in the initial complaint’s caption the words “eligible for commercial court assignment requested,” and (B) ~~complete~~ completing a civil cover sheet that indicates the action is an eligible commercial case.

- (3) By Other Parties.** If a plaintiff has not sought assignment to the commercial court, another party, within 20 days after that party's appearance, may file a separate notice stating that the case is eligible for, and requesting assignment of the case to, the commercial court.
- (2)(4) Assignment to Commercial Court.** The court administrator will review a complaint and civil cover sheet filed in accordance with Rule 8.1(e)(1) and will assign an eligible case to a commercial court judge. Upon the filing of a complaint by a plaintiff requesting assignment to the commercial court under subpart (d)(2), or the filing by another party of a Notice Requesting Assignment to the Commercial Court under subpart (d)(3), the case will be assigned to the commercial court.
- (3)(5) Motion to Transfer out of Commercial Court by the Presiding Judge.** After assignment of a case to the commercial court, a if the commercial court judge, upon motion of a party or on the judge's own initiative, may transfer the case out of commercial court if the judge determines the matter is not an eligible "commercial case," as defined in this Rule. Any party filing a motion under this Rule must do so no later than 20 days after that party's appearance in the case. then the judge may either keep the case or request that the presiding judge or designee transfer the case out of the commercial court. If the presiding judge or designee agrees to transfer the case out of the commercial court, the presiding judge or designee may either leave the case with the judge to whom it is currently assigned or reassign the case to a general civil court.
- (6) Discretion of Presiding Judge.** The presiding judge or designee may reassign any case that qualifies under Rule 8.1(b)(6), (7), (10), or (11) to a general civil court.
- (4)(7) Motion/Judicial Request to Transfer to the Commercial Court.** On motion of a party filed within 20 days after that party's appearance in the case, or the court's own initiative wWithin 20 days after the filing of the first responsive pleading or Rule 12 motion, a judge of a general civil court may order request the presiding judge or designee tothe transfer of a case to the commercial court if that judge determines the matter is an "eligible commercial case" as defined in this Rule.
- (5)(8) Complex Cases.** Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to a the Maricopa County complex civil litigation program under applicable local rules. Rule 8(i).
- (f)(e) Case Management.** Notwithstanding any contrary language in Rule 26.2(d)(1), from the filing of the complaint unless and until the commercial court assigns the case to a different tier after the Rule 16(d) scheduling conference, cases in the commercial court are deemed to be assigned to Tier 3. Rules 16(a) through 16(j) apply to cases in the commercial court, except:
- (1) Scheduling Conference.** Scheduling conferences under Rule 16(d) are mandatory.
  - (2) Early Meeting.** Before filing a Rule 16(c) Joint Report, and in addition to conferring about the subjects in Rule 16(b)(1), the parties must confer, as set forth

in the commercial court's checklist governing the production of electronically stored information, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of such information, including:

- (A) ~~R~~requirements and limits on disclosure and production of electronically stored information;
- (B) ~~T~~the form or formats in which the electronically stored information will be disclosed or produced; and
- (C) ~~I~~f appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing electronically stored information.

(3) ***Joint Report and Proposed Scheduling Order.*** The parties' Rule 16(b) Joint Report and Proposed Scheduling Order must address the items specified in Forms 14(a) and 14(b), including:

- (A) ~~W~~whether the parties expect electronically stored information to be an issue in the case and, if so, whether they have reached an agreement regarding the discovery of electronically stored information, have filed a stipulated order, and have or anticipate disputes concerning electronically stored information;
- (B) ~~W~~whether the parties have reached an agreement regarding the inadvertent production of privileged material pursuant to Arizona Rule of Evidence 502, and, if so, whether they have filed a stipulated order;
- (C) ~~W~~whether any issues have arisen or are expected to arise regarding claims of privilege or protection of trial preparation materials under Rules 26(b)(6) and 26.1(h);
- (D) ~~W~~whether the parties believe that a protective order is necessary and, if so, whether they have filed a stipulated protective order; and
- (E) ~~W~~whether the commercial court should assign the case to a tier other than Tier 3 after the Rule 16(d) scheduling conference, and, if so, why.

(4) ***Motions to Dismiss.*** Any motion to dismiss pursuant to Rule 12(b)(6) must attach a good faith consultation certificate complying with Rule 7.1(h) certifying that the parties have been unable to agree that the pleading is curable by a permissible amendment.

~~(g)~~**(f) Motions.** With notice to the parties, a commercial court judge may modify the formal requirements of Rule 7.1(a) and may adopt a different practice for the efficient and prompt resolution of motions.

**(g) Cases Not in the Commercial Court.** The case management procedures in Rule 8.1(e) are available to any judge who finds those procedures beneficial, wholly or partially, in managing a commercial case that is not assigned to the commercial court, or that is pending in a county that has not established a commercial court.